

MINUTES

WARRICK COUNTY AREA PLAN COMMISSION

Regular meeting held in Commissioners Meeting Room,
Third Floor, Court House,
Boonville, IN
Monday, January 10, 2011, 6:00 P.M.

MEMBERS PRESENT: Guy Gentry, Mike Moesner, Marlin Weisheit, Larry Willis and Judy Writsel.

Also present were Morrie Doll, Attorney, Sherri Rector, Executive Director and Sheila Lacer, Staff.

MEMBERS ABSENT: Phil Baxter and Brad Overton.

ELECTION OF OFFICERS:

Mrs. Rector called the meeting to order. Roll call was taken and a quorum declared present.

Mrs. Rector stated the first order of business is to elect a President of the Warrick County Area Plan Commission to serve during 2011.

Larry Willis made a motion to elect Guy Gentry as President of the Area Plan Commission for the year 2011.

Mike Moesner seconded.

Mrs. Rector asked for any other nominations.

Mike Moesner moved that nominations be closed and Guy Gentry be elected President by acclamation.

Larry Willis seconded.

Mrs. Rector called for a vote on the motion and the motion carried unanimously.

The President stated the next item on the agenda is to elect a Vice President for 2011.

Mike Moesner made a motion to elect Larry Willis as Vice President for 2011.

Marlin Weisheit seconded.

Mike Moesner moved that nominations be closed and Larry Willis be elected Vice President for 2011 by acclamation.

Marlin Weisheit seconded and the motion carried unanimously.

SET MEETING DATES, TIME, AND PLACE:

Larry Willis made a motion the meetings to be held on the 2nd Monday at 6:00PM of each month in Commissioners Meeting Room, Third Floor, Court House, Boonville, Indiana. The motion was seconded by Mike Moesner and unanimously carried.

ADOPTION OF RULES AND REGULATIONS:

Mrs. Rector stated they all have a copy of the Rules and Regulations in their packets and the changes have been highlighted for them. The only changes are basically that applications must be filed four weeks before the meeting and that notices must be mailed out 21 days before the meeting. She stated this is because the Post Office holds certified mail for 15 days and the notices are not getting back before the meetings. She stated all the other Rules of Procedure stay the same.

Larry Willis made a motion to accept the Rules and Regulations as updated. The motion was seconded by Marlin Weisheit and unanimously carried.

APPOINTMENT TO THE BOARD OF ZONING APPEALS:

Municipal Representative Appointment

Mrs. Rector stated the Municipal Representative has to be Judy Writsel since she is the representative from the participating towns of Lynnville, Tennyson and Elberfeld. She stated that Advisory Council appointed her to this Board.

Marlin Weisheit made the motion to appoint Judy Writsel as the Municipal Representative to the Board of Zoning Appeals. The motion was seconded by Mike Moesner and unanimously carried.

County Representative Appointment

Mrs. Rector stated the two members that qualify for this appointment are Larry Willis and Mike Moesner.

Mike Moesner made a motion to appoint Larry Willis as the County Representative to the Board of Zoning Appeals. The motion was seconded by Marlin Weisheit and unanimously carried.

APPOINTMENT TO PLAT REVIEW COMMITTEE:

Mrs. Rector stated they need one Board member to sit on this committee. She stated Mr. Gentry has been serving on this committee since they adopted the ordinance creating the committee.

Mike Moesner made a motion to appoint Guy Gentry to the Plat Review Committee. The motion was seconded by Marlin Weisheit and unanimously carried.

FEE SCHEDULE:

Mrs. Rector stated they have a copy of the fee schedule in their packets. She stated the parcelization was adopted at the last meeting and the other fees are what was passed last year.

Guy Gentry commented this is more of a report since they passed the parcelization fees last month.

ANNUAL REPORT:

Mrs. Rector stated they should have received a copy of this report in their email and have a copy in their packets. She stated this reflects that permits are starting to slowly climb back up and building has picked up some in the County. She commented the total dollar amount for commercial permits is down even though the number of permits went up and that is because Alcoa, Deaconess and Wal-Mart were constructed over the last few years.

Guy Gentry stated for the record that this report has been excellently put together and gives a lot of detail and history as also stated by Attorney Doll.

MINUTES: Upon a motion by Larry Willis and seconded by Guy Gentry, the Minutes of the last regular meeting held December 6, 2010, were approved as circulated.

The President explained the Rules of Procedure to the petitioners.

SUBDIVISIONS FOR PRIMARY PLAT APPROVAL:

PP-11-01 – Baker Place Subdivision by APPLICANT & OWNER Richard A. Baker Trust, Richard A. Baker, Trustee. 100.579 acres located on the N side of SR 261 approximately 600 feet W of the intersection formed by SR 261 and Center Rd. (W 500), Boon Twp. *Complete legal on file. Advertised in the Boonville Standard December 30, 2010.*

Bill Bivins, ACCU Survey and Richard Baker were present.

The President called for a staff report.

Mrs. Rector stated they have all the return receipts except for Charles & Susan Snyder, however, the USPS website shows the letter being delivered but the green card has not been received and so it will need to be submitted when they receive it. She explained the property is zoned Agriculture and the surrounding property is zoned Agriculture with some R-1A to the west and a small portion of R-1A across SR 261. She added there is no flood plain on the property. Mrs. Rector stated this is a 10 lot subdivision with nine residential lots and a 49.62 acre outlot to be used for Mr. Baker's personal use. She added five of the lots have existing houses and part of this property is in an unrecorded exempt division. Mrs. Rector stated this property fronts on

State Highway 261 and explained that Lots 1, 2, 6 and 8 have existing driveways. She added they are showing shared driveways between Outlot B and Lot 3; Lots 4 & 5; Outlot B & Lot 6. She stated that Lot 8 will share the existing driveway with lot 9. She then explained that Lot 7 currently accesses a shared driveway through an easement and they will need to obtain a State Permit on their frontage. Mrs. Rector stated they will need to submit approved State Driveways prior to recording secondary plat. She stated Richard Meyer, INDOT, came into the office and they did go over the plat and he then met with Mr. Bivins out on the property. She stated Mr. Meyer did contact her and stated there should be no problems with obtaining the driveway permits. She stated they were requesting no drainage plans be required and that was approved today by the Drainage Board. She added the Health Department has signed off on septic sites and Chandler Water has submitted a letter stating they have lines in place and available for connection. She added this is a residential subdivision and a condition should be that prior to secondary plat recording that all State Driveway Permits be obtained. She stated the plat is in technical conformity with the Subdivision Control Ordinance.

Bill Bivins stated they have filed for all of the State Driveway Permits today.

Discussion ensued over the access to the outlot.

Ascertaining there were no other questions from the Board and being no remonstrators present the President called for a motion.

Mike Moesner made a motion to approve PP-11-01 subject to them submitting the State Highway Driveway Permits before the secondary plat is recorded. The motion was seconded Marlin Weisheit and unanimously carried.

REZONING PETITION:

PC-R-11-01 – Petition of Leo Brown Group, LLC by Thomas C. Smith, President. OWNER: K.R. Development Co., by Kenneth D. Davis, M.D., Ptnr. To rezone 4.015 acres located on the S side of Stahl Rd. approximately 1,350' W of the intersection formed by Stahl Rd. (S 375) & Epworth Rd. (W 1050) & 0' S of the intersection of Stahl Rd. & Stahl Business Ct., Ohio Twp. from "C-1" Neighborhood Commercial to "C-4" General Commercial with a Use and Development Commitment. *Complete legal on file. Advertised in the Boonville Standard December 30, 2010.*

Thomas Smith and Mike Wagner with Leo Brown Group were present.

The President called for a staff report.

Mrs. Rector stated they will need to submit either the return receipt or unopened letter from Wolfson Young, LLC; Wade Farr; Tanya Anslinger; and Michael & Amy Naas. She stated the notices were mailed out on December 21, 2010 to the addresses on file in the Auditor's Office. She explained this petition is to rezone 4.015 acres from "C-1" Neighborhood Commercial to "C-4" General Commercial with a Use and Development Commitment limiting the use on the property to an assisted and independent living/skilled nursing facilities and related business

activities. She added there is no minimum lot area for commercial zoning. Mrs. Rector explained there is an existing primary plat (Gilman Subdivision) approved April 12, 2007 and if they choose to secondary plat Gilman Subdivision they can but if they choose to change the approved layout they have to file a new primary plat. She then explained the Comprehensive Plan projects the area to be commercial and this property is located within the TIF district with the County having made certain agreements in helping with funds for the project. She stated the property is currently vacant and the property to the east is "R-1A" - Sweat's Subdivision; to the north is "C-3" Highway Commercial and "C-4" General Commercial – Charlestown Square Subdivision; to the west is "C-4" General Commercial (remainder of subject property) and further west is "C-4" - ITT. She stated the majority of the property is in a 500 year flood plain which allows Improvement Location Permits to be issued without Certified Plot Plans. Mrs. Rector stated the property fronts along Stahl Road but if subdivided it will front an interior street. She stated the County Engineer stated in the site review he will make a decision if any improvements will be required to Stahl Road. She commented the application states the property will be used as an assisted living/skilled nursing facility which is allowed in "C-4" zoning. She then added the applicants have sent an email stating they invited the adjoining property owners to an informal informational meeting on Thursday, Jan. 6th at 8 pm at the Hilton Garden Inn so they can answer any questions prior to this meeting. She then added the application is in order.

Thomas Wagner stated essentially what they are purchasing is eleven acres off a twenty-two acre parcel and almost half of that property they are purchasing is zoned "C-1" and for the assisted living use they need to rezone it to "C-4" to match the rest of the property. He stated their development commitment supports them only having the assisted living and supported uses. He stated they feel this use will be a good buffer for the residents just to the east of this property in that this will be residential in nature. He stated the buildings will be wood frame construction, single living and will be a good buffer for anything that might go in to this other "C-4" property that might be a little heavier commercial. He stated the remainder of this property is "C-4" and they feel this is consistent with health care and residential uses in the area.

The President called for questions from the Board.

Mike Moesner asked if that is an example of what the buildings will look like (pointing to a display).

Mr. Wagner stated that is correct and he passed out a small layout showing the plans. (Copy on file.) He stated this is their preliminary site plan and they will be meeting with staff tomorrow to go through the site specific design requirements.

Mr. Smith stated they are going to walk through the uses and how they plan to progress and continue.

Mr. Wagner stated they like this area, Newburgh in general with the hospitals around them and what they have seen in the market relating to other senior living properties and they really would like to develop a full continuum of care community so as you enter in the property they will see they have garden homes for truly independent seniors. He stated this will basically be a garden home six-plex where they will have six units. He stated sometimes they will have somebody that

is very independent but has a loved one that is in the nursing or assisted living facility and the other person still wants a kitchen and a place they can still drive their car. He stated this is the first step into the community. He stated the next facility is really the main building which is the assisted living facility and then the skilled nursing facility which focuses on rehabilitation and care for people coming out of the hospital with hip or knee replacements, etc. He stated so they really have all levels of care at one location and it is in visible proximity to hospitals.

Guy Gentry stated what he is looking at says it will be 140 beds in the skilled side and 40 in the independent living.

Mr. Wagner stated that is correct.

Mr. Wagner stated there is also 24 independent living in the garden homes units as well.

Larry Willis asked how big the facility will be.

Mr. Wagner stated they are purchasing approximately eleven acres. He stated this four acres they are rezoning tonight is included in the eleven acres.

Marlin Weisheit stated they might advise the Board how many jobs they will be creating with this project.

Mr. Wagner stated they are projecting about 169 new employees hired. He stated this isn't an instance where they are replacing a facility, they are building an all new one. He stated this will be all new employees ranging from administrative to nursing and support staff and physical therapy staff. He stated what they would like to do is develop this eleven acres and if things go as planned they would like to grow the campus in this area next door if the property is still available.

Mike Moesner stated so their intent is to develop all eleven acres at one time.

Mr. Smith stated they are developing the eleven acres.

Ascertaining there were no other comments from the Board, the President called for remonstrators.

Larry Taylor, Economic Development Director for Warrick County stated one thing they did when they were working with this group to get them to come to Warrick County was he talked to his counterpart in Hendricks County where they are building a very similar facility. He stated they have already have one underway in Fort Wayne and they have one in the early construction phase in Avon and basically his counterpart says they are excellent to work with and they have an excellent reputation in the area and they are really known for meeting their commitments. He stated that was something he was specifically questioning as well as working with the neighboring property owners. He stated from everything he has researched on this company and the references he has received is they keep their commitments and they will be a good addition to the community.

Mrs. Rector asked if anyone showed up at their informational meeting.

Mr. Wagner stated Deaconess Hospital came, which was nice because they got some names of case managers to work with.

Mike Moesner stated so they are ready to hit the ground running if they get the zoning.

Mr. Wagner stated they very much want to get started as soon as possible that is why Mr. Smith will be meeting with staff tomorrow to understand the rest of the process of rezoning and approvals.

Mrs. Rector stated Attorney Doll sat in on the first Site Review and it was determined that they didn't need to subdivide the lot any further – that all of the structures are in conjunction and accessory to each other and that is why they didn't file a PUD zoning because it is accessory to each other.

Ascertaining there were no other questions from the Board and being no other remonstrators the President called for a motion.

Marlin Weisheit made a motion to recommend approval to the County Commissioners of PC-R-11-01 from "C -1" Neighborhood Commercial to "C-4" General Commercial with a Use and Development Commitment. The motion was seconded by Larry Willis and unanimously carried.

The petitioners were informed this will be forwarded to the County Commissioners with a recommendation of approval on February 14, 2011, in this room at 4:00 p.m.

AMENDING ORDINANCE TO THE COMPREHENSIVE ZONING ORDINANCE

AN ORDINANCE AMENDING ARTICLE V ENTITLED SPECIAL USES SECTION 5 PROCEDURE SUBSECTION B OF THE COMPREHENSIVE ZONING ORDINANCE FOR WARRICK COUNTY, INDIANA

The purpose of this ordinance is to allow applicants filing an SU 13, Mineral extraction, storage, and processing, and/or oil/gas productions, having more than two owners of the surface subject property be allowed to send certified notice to said owners instead of signing application. Ordinance further requires notice to be given 21 days prior to public hearing. Advertised in the Boonville Standard December 30, 2010.

Mrs. Rector stated this is the ordinance that they have discussed a few times and the Board of Zoning Appeals discussed this as well at a few meetings and this is their recommendation. She stated Attorney Doll can explain it further if they have any other questions. She stated Attorney Marco DeLucio is also present this evening.

Morrie Doll stated Warrick County is rich in coal and the problem they are finding is in the 2005 Ordinance they inserted a local control over the mining process and mineral extraction became a

Special Use. He stated prior to that it was not controlled by the zoning ordinance. He stated they debated whether philosophically having control over the mining process at the local level was advantage or disadvantage and it was pretty much unanimously decided that it was an advantage to have some local review and input over the coal mining process. He stated Attorney DeLucio, on the behalf of Black Beauty Coal/Peabody Coal came forward with a dilemma they are facing in which they have a large project they are working on in the northern area of the County that may entail several different applications over a period of time. He stated when you have such a large piece of ground involved it ran into difficulty into coming into compliance with the ordinance. He stated the existing ordinance requires that to get an SU 13 to do mineral extraction, two things have to happen. He stated first of all you have to have the owners of the property sign the application and that could be fifty people in a 1,000 acre permitted application. He stated many of the parcels may be owned by the coal company but as you know there are several different ways they can acquire the rights to mine the coal; they can own all of it from top to bottom or they can own only the mineral coal rights where they own the deed to the coal but someone else owns the surface. He stated in cases where you have shaft mining that might be very important because they still need an SU 13 but they really don't disrupt the surface of the ground in any way. He stated finally they could just have a lease for the coal. Attorney Doll stated now they require the owners to sign the application via the 2005 Ordinance which means they have to get all of the owners sign and some may have the coal rights separated years ago He added many owners are sometimes strung all over the country and to find them and convince them to sign a government document and to participate is very difficult to do sometimes. He stated they can either sign the application or they are faced with the dilemma they can't present the application. Attorney Doll stated secondly, the ordinance requires all the owners to physically be present at the meeting and if they fail to appear in person, by legal counsel or by recorded power of attorney they can't hear the application for the Special Use. He stated there are conflicting property rights; on the one hand you have the property rights of the land owners to know they are involved in the process and on the other hand Peabody has property rights because they have paid for the rights to mine the coal and it is essential and good for the economy and so over the past several months they have been trying to fathom a compromise of how do they have these two very precious rights; the rights to property where they have protected their due process interest, their constitutional rights and at the same time created a mechanism that allows the application to be filed without having to have every single property owner sign the application and appear for the hearing. He stated this is the compromise they have come up with in which you have-only in cases of mineral extraction no other Special Use-where the applicant effected properties owned by two or more owners allows the applicant to file an application in which they will certify in the application that here is a list of every single property owner affected by this application, that is going to be part of their application, and then in addition to the notification that goes to the adjacent property owners there is a special notification that will be sent out to the owners of the ground affected by the application telling them the hearing dates and what it involves and they have a right to appear at the meeting. He stated they believe that creates a balance of rights, meets the standard under the law and allows them to be able to proceed. He stated this is not a broad brush approach, it is a surgical approach and only applies to SU 13 applications and he believes it will withstand court test should anyone choose to challenge.

Ascertaining there were no questions from the Board the President called for a motion.

Larry Willis made a motion to recommend approval of the amending ordinance to the County Commissioners. The motion was seconded by Mike Moesner.

Mrs. Rector asked if they want to amend their Rules of Procedure and send this to the Commissioner's at their January 24th meeting instead of the February 14th meeting. She stated that way if the Commissioners pass it then the BZA will know to amend their Rules of Procedure at their meeting.

Attorney Doll stated then part of the motion Mr. Willis should make would be to also suspend the Rules of Procedure to move this to the next Commissioner's meeting.

Larry Willis amended his motion to include the suspension of the Rules of Procedure to send it to the next Commissioner's meeting. Mike Moesner amended his second and the amended motion unanimously carried.

Attorney Doll stated he would like to publicly thank Attorney DeLucio for his patience and working with them. He stated he did a lot of the drafting for them and met with them a couple of times and he drafted and redrafted so he would like to thank him for his help.

Attorney DeLucio stated he would like to thank the Board for allowing staff and counsel to work with him to try to come up with a solution that works for everyone.

OTHER BUSINESS:

None.

ATTORNEY BUSINESS:

Attorney Doll stated he would like to report that he filed a brief with the Indiana Supreme Court on petition of transfer in the Hamby vs Board of Zoning Appeals/APC wind turbine case. He stated he hopes the Supreme Court will see again that the appellate court got it right as did Judge Meyers at the trial level and will deny the petition to transfer. He stated he will keep them posted.

He stated on a personal note – it is so refreshing to be at this Board meeting now and have a Commissioner who actually makes motions and votes.

Mrs. Rector asked if he wants to update the Board on Brandon Smith in Chandler.

Attorney Doll stated he appeared for a hearing in that Mrs. Smith, or maybe she is Mrs. Smith, filed a motion to quash the Court's order requiring that the property be cleaned up from its unsightly condition as a junk yard and/or a public nuisance. He stated that was a decision the Court had made and a thirty day period for cleanup had been given and she alleged that she was a property owner and was aggrieved by not being part of the process. He stated at his request, staff researched this and determined there was in fact a deed some number of years ago where

she conveyed away her rights, so she wasn't a property owner. He stated he appeared at the hearing, the Judge denied the motion to quash and gave an additional period of time until February 18, 2011, if he recalls correctly, to give him one last chance to clean it up. He stated if the Board will recall, there is an ongoing penalty in the Judge's prior order of "x" number of dollars per day and it is not insignificant. He stated he thinks it is over \$100 a day.

Guy Gentry stated the last time he went past there it didn't look any better.

Attorney Doll said the Judge gave him strict instructions that if he didn't clean it up under the ordinance and the injunctive relief that was requested he will in fact order Warrick County's Highway Department to enter the property under Court Order and clean it up and that the cost will be tallied and assessed as a lien against the property.

EXECUTIVE DIRECTOR BUSINESS:

None.

Being no further business, the meeting adjourned at 6:45 p.m.

Guy Gentry, President

ATTEST:

Sherri Rector, Executive Director